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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Lassen)

In re A. O., a Person Coming Under the Juvenile
Court Law.

C079435

LASSEN COUNTY CHILD AND FAMILY
PROTECTIVE SERVICES,

(Super. Ct. No. J6054)

Plaintiff and Respondent,

v.

M. O. et al.,

Defendants and Appellants.

R. T.,

Respondent.

Monica O. and Craig O.,¹ mother and presumed father (parents) of the minor
A. O., appeal from orders made at a Welfare and Institutions Code² section 364 review

¹ Monica O. will be referred to as mother while Craig O. will be referred to as father.

hearing at which the juvenile court terminated jurisdiction and issued exit orders. The exit orders granted primary physical custody to A. O.'s noncustodial biological father, Robert T., joint legal custody to the parents and Robert T., and gave the parents visitation every other weekend. Finding no error, we affirm.

BACKGROUND

In April 2014, A. O., a three-year-old girl, and her three siblings were detained by the Lassen County Child and Family Protective Services (the department). The department filed a juvenile dependency petition under section 300 alleging A. O. was at risk of physical and emotional harm due to her parents' long history of substance abuse and domestic violence, which included a recent incident where father physically assaulted mother in front of their children while threatening to kill her. The petition also alleged A. O. was at risk of physical and emotional harm due to the filthy and unsanitary condition of her parents' home as well as a lack of food. The petition further alleged Robert T. had his parental rights terminated as to two of A. O.'s half siblings due to drug use, domestic violence, and neglect.

At the detention hearing, the juvenile court determined a continuance in the home was contrary to A. O.'s welfare. A. O. was detained and placed in an emergency shelter. The juvenile court ordered visitation and services for the parents and Robert T. and scheduled a jurisdictional hearing.

At the jurisdictional hearing, the juvenile court found true the allegations in the dependency petition and scheduled a dispositional hearing. Prior to the hearing, the department filed a report recommending A. O. be declared a dependent child and family reunification services be provided to the parents. The department further recommended A. O. be placed with Robert T. under a plan of family maintenance. In making these

² Undesignated statutory references are to the Welfare and Institutions Code.

recommendations, the department concluded there was substantial danger to the mental health, physical health, and safety of A. O. if she were returned to her parents.

With respect to Robert T.'s family, the department stated: "[Robert T.] and his wife . . . have a strong marriage with little to no discord. The couple has worked together to provide the care [A. O.] needs, and have brought [A. O.] into the family constellation with the other two children in the home. [Robert T.] has had stable employment for one and [and] half years and provides for his family. [Robert T.] has a home and room for [A. O.] when she comes to live with them." With respect to A. O.'s parents, the department stated: "The parents love their children and desire to reunify. Despite difficult trials in the past of homelessness, parental discord, parental absence, substance abuse, mental illness, and sub-standard living arrangements, the family has remained bonded. The family demonstrates excellent resiliency skills." In addition, the department reported A. O.'s parents were currently homeless and did not have stable employment. The department further reported father had engaged in a pattern of "explosive anger" in his interactions with the department and other agencies, and had sought therapy and medication to reduce his anger and control his emotions.

A court appointed special advocate (CASA) report was also filed in connection with the dispositional hearing.³ The report concluded A. O. would benefit from continuing to live in foster care or with Robert T. and his wife. In so concluding, the report stated A. O. had expressed a desire to live with Robert T. and his wife on more than one occasion, and had stated she did not like that her father "yells a lot." The report noted Robert T. had represented that he and his wife were prepared to provide a safe and loving home for A. O.

³ In May 2014, the juvenile court appointed Thomas Stetson as the CASA for A. O.'s case.

At the dispositional hearing, the juvenile court decided A. O. should remain in foster care. The juvenile court ordered visitation for Robert T. and visitation and reunification services for the parents.⁴ In deciding not to change A. O.'s placement, the juvenile court found that the parents had made minimal progress toward alleviating or mitigating the causes necessitating A. O.'s placement, while Robert T. had made adequate progress in this regard.

Following the dispositional hearing, mother filed a section 388 petition for modification seeking placement of A. O. in her home. As changed circumstances, the parents asserted they had mitigated the causes necessitating A. O.'s placement; namely, they had a clean home, they ceased using drugs, and had not engaged in any domestic violence. Robert T. also filed a section 388 petition for modification seeking placement of A. O. in his home.

Prior to the six-month review hearing, the department filed a report recommending A. O. remain a dependent child and the juvenile court order an additional six months of family reunification services for the parents. The department further recommended A. O. be placed with Robert T. under a family maintenance plan. In support of its recommendations, the department stated: "[A. O.] is a strong willed child who requires consistent parenting with loving guidance and discipline. The current home environment of [the parents] tends to be more chaotic due to limited space and the greater number of people residing in small quarters. . . . [F]or [A. O.'s] benefit, structure and routine should be provided consistently. It is the consensus of the department that [A. O.] will receive the support she needs in placement with [Robert T.], while continuing regular visitation with the [parents]." In addition, the report noted that Robert T. resides in a comfortable three-bedroom home, is steadily employed, voluntarily completed parenting classes,

⁴ The juvenile court also granted Robert T.'s request to elevate his status from biological father to presumed father.

reported continued sobriety, and had supplied the department with documentation of services completed. With respect to A. O., the department reported she had extensive untreated dental needs. It also reported A. O.'s foster parent and Robert T. had expressed concerns that A. O. was regressing developmentally, citing an increasing number of " 'accidents' " in which A. O. urinated or defecated in her pants when a bathroom was readily available.

A CASA report was also filed in connection with the six-month review hearing. It recommended A. O. remain a dependent child and be placed immediately with Robert T. and his wife. The report also recommended that the parents attend additional parenting classes and anger management counseling due to their inability to control their anger in front of their children, and that the parents be allowed to have only supervised visits with A. O. due to their neglect and inappropriate and dysfunctional behavior in the presence of their children. In making these recommendations, the report stated the parents were no longer allowed on the department's premises due to their aggressive behavior. It also stated the parents had not allowed access to their home, had allowed their children to witness a verbal and physical assault on several CASA's, and had not properly restricted one of their children from viewing pornography and posting inappropriate sexual and marijuana related content to his Facebook page.⁵ The report also noted mother had consistently tested positive for marijuana.

At the six-month review hearing, the juvenile court granted the parents' section 388 petition. A. O. was placed with her parents on family maintenance with

⁵ The CASA report describes an incident where the parents shouted at several CASA's in front of their children. During the incident, father spit food in the direction of the CASA supervisor. Some of the spit from father's mouth landed on the supervisor.

visitation for Robert T. The juvenile court scheduled a review hearing pursuant to section 364.⁶

Prior to this hearing, a CASA report was filed recommending A. O. remain a dependent child and be placed immediately with Robert T. and his wife. In support of this recommendation, the report stated A. O. had missed numerous days of school and kids were calling her “ ‘stinky’ ” because of her lack of personal hygiene and dirty clothes. The report also stated Robert T. had consistently reported A. O. was wearing dirty clothes and smelled when she arrived at his home. In addition, the report noted that A. O. continued to have dental issues, and that A. O.’s lack of personal hygiene presented a hazard, particularly since she had a history of yeast and urinary tract infections. The report further noted that A. O. slept with one of her siblings when she stayed at her parents’ house, which was concerning to the CASA because two of A. O.’s siblings viewed pornography and were near the age of puberty. Given the conditions at the respective homes, the report concluded: “[We] continue to believe [A. O.] would benefit from being placed with [Robert T. and his wife]. Under their care she is made to follow a routine, she is well cared for and [is taught] . . . the importance of personal hygiene. This will not only benefit her physically, but also socially as the children in her school will not target her or tease her for not being clean or wearing [dirty] clothes.”

The department also filed a report in connection with the section 364 hearing. The department recommended dependency jurisdiction be terminated for A. O., primary physical custody be granted to Robert T., and legal custody be shared by the parents and Robert T. In support of its recommendations, the department stated Robert T. and his wife had worked hard to establish a fit home for A. O., and they continued to be willing to work with A. O.’s parents to establish a custody and visitation schedule that would

⁶ Following the hearing, the juvenile court issued an order denying Robert T.’s section 388 petition for modification.

serve A. O.'s best interests. The department concluded A. O.'s placement with Robert T. and his wife was preferable due to the cleanliness of their home, the structure and routine provided by them, and the existence of basic necessities in their home, such as a bed for A. O. The department noted that while an allegation of sibling abuse was presented at the detention hearing, it was later determined Robert T. had voluntarily relinquished his rights to two of his children and subsequently "treated" the issues leading to the detention of these children.

With regard to A. O.'s physical health, the department reported A. O. had experienced more than the usual medical treatment during the reporting period, including reoccurring urinary tract and yeast infections. It also reported A. O. had arrived to her visits with Robert T. in "filthy condition," A. O. had four incidents of wetting herself during a visit with Robert T., and Robert T. and his wife had noticed that A. O.'s ability to take care of herself (e.g., teeth brushing, wiping after using the bathroom) had diminished. The department further reported A. O. did not receive a behavioral assessment as recommended at the last court hearing, and it appeared A. O.'s father had canceled a dentist appointment that Robert T. had made for her. In recommending placement with Robert T., the department stated the parents had failed to address multiple concerns regarding the health and well-being of A. O.

At the outset of the section 364 hearing, the juvenile court clarified that the contested issue was a change of A. O.'s custody from her parents to Robert T. Following a hearing, the juvenile court terminated dependency and granted primary physical custody to Robert T. with visitation to the parents.⁷ The juvenile court also ordered joint

⁷ Father and the social worker testified at the hearing. Among other things, the social worker testified that she did not receive any documents from the parents showing they had engaged in any reunification services since A. O. was returned home. She also stated that when she provided the parents with a copy of the 12-month report, father, in

legal custody to the parents and Robert T. In doing so, the juvenile court explained that A. O. was placed with her parents after the sixth-month hearing with the hope they would facilitate a relationship with Robert T. and his wife.⁸ The juvenile court concluded that it was “painfully clear” this had not happened, and that it was in the best interest of A. O. to be placed with Robert T. The juvenile court found that A. O.’s best interests would be served by placing her with Robert T. and his wife because they would ensure that A. O.’s medical appointments were taken care of and that she maintained a relationship with her parents.

Mother and father both filed a timely notice of appeal. On appeal, father joins the arguments made by mother.

DISCUSSION

The parents contend the juvenile court erred by terminating jurisdiction with an exit order granting Robert T. primary physical custody of A. O. We disagree.

“ ‘If a child has been declared a dependent of the juvenile court and placed under court supervision, the status of the child must be reviewed every six months.’ [Citation.] The applicable standards at the six-month review hearing differ depending on the child’s placement.” (*In re Maya L.* (2014) 232 Cal.App.4th 81, 98.) Section 364, subdivision (a) provides the standard when “a child under the supervision of the juvenile court . . . is not removed from the physical custody of his or her parent or guardian.” (See *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 20.) Section 364 also applies in cases where, as here, a child has been removed from the physical custody of a parent but later returned to the home

the presence of A. O., told her that he hoped her whole family dies and that she and her whole department are lazy.

⁸ The juvenile court explained that A. O. was placed with her parents because it appeared such placement was in her best interest as it was the home she grew up in with her siblings. The juvenile court further explained that it made this decision despite the fact the parents’ home was probably not the cleaner of the two homes, the more affluent of the two homes, and the parents were not as pleasant as Robert T. and his wife.

under court supervision. (*In re Shannon M.* (2013) 221 Cal.App.4th 282, 290-291; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 313-315.)

At the section 364 review hearing, “the court is not concerned with reunification, but in determining ‘whether the dependency should be terminated or whether further supervision is necessary.’ ” (*In re Pedro Z., supra*, 190 Cal.App.4th at p. 20.) “The juvenile court makes this determination ‘based on the totality of the evidence before it.’ ” (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1155.) “The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” (§ 364, subd. (c); see also *Bridget A v. Superior Court, supra*, 148 Cal.App.4th at p. 304.)

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make ‘exit orders’ regarding custody and visitation.” (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122-1123.) When terminating jurisdiction and issuing custody orders, the juvenile court must consider the best interests of the child. (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) This concern underlies the system’s primary goals of child safety, family preservation, and timely permanency and stability for the child. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.)

We review a juvenile court’s decision to terminate dependency and to issue exit orders for abuse of discretion. (See *Bridget A. v. Superior Court, supra*, 148 Cal.App.4th at p. 300.) We will not disturb an exit order “ ‘ “unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.” ’ ” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *Bridget A.*, at p. 300.) The test for abuse of discretion is whether the juvenile court exceeded the bounds of reason. If two or more inferences can reasonably be deduced from the facts, we may not substitute our decision for that of the juvenile court. (*In re Stephanie M.*, at pp. 318-319.)

We conclude the juvenile court did not abuse its discretion in terminating jurisdiction over A. O. and issuing exit orders, including an exit order granting Robert T. primary physical custody of A. O. The record contains ample evidence supporting the juvenile court's determination that A. O.'s best interests would be served by placing her with Robert T. and his wife. The department and the CASA repeatedly recommended such placement. In doing so, they consistently reported A. O. was well cared for by Robert T. and his wife and they never expressed any concerns regarding placement of A. O. in their home. The record reflects Robert T. and his wife worked hard to provide a fit home for A. O. and they were willing to work with the parents to serve A. O.'s best interests. The record also reflects A. O. expressed a desire to live with Robert T. and his wife on more than one occasion.

By contrast, the record contains evidence A. O. did not like staying with her parents and was not well cared for by them. There was evidence the parents' home was chaotic due to inadequate space for the children, the parents failed to address multiple concerns regarding A. O.'s health and well-being, and the parents had an inability to control their anger. The evidence also reflects the parents failed to facilitate a relationship with Robert T. and his wife.

Based on the evidence in the record, we conclude the juvenile court acted well within its discretion in finding that A. O.'s best interests would be served by granting Robert T. primary physical custody of A. O. We reject the parents' unsupported contention the juvenile court erred by "remov[ing]" A. O. from their physical custody without requiring the department to file a section 388 petition. In terminating jurisdiction over A. O. at the section 364 hearing, the juvenile court had the authority to issue exit orders regarding custody and visitation without the filing of such a petition. (§ 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) There is no statutory language requiring a section 388 petition to be filed before the juvenile court can issue exit orders modifying prior custody arrangements when terminating jurisdiction under section 364.

The parents did not cite, and we are unaware of, any case law imposing such a requirement.

We also reject the parents' contention the juvenile court erred by considering the wrong criteria in making exit orders. The record reflects the juvenile court correctly considered the totality of the circumstances and issued exit orders based on the best interests of A. O. (See *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31; *In re John W.*, *supra*, 41 Cal.App.4th at p. 965 ["In making 'exit' orders, . . . it is the best interests of the child, in the context of the peculiar facts of the case before the court, which are paramount"].) Contrary to the parents' contention, section 364, subdivision (e) is inapplicable to this case. That section specifies procedures for transferring physical custody of a child from a parent to the custody of the social worker when the juvenile court is retaining jurisdiction over the minor. (See § 364, subd. (e).) It does not govern custody orders issued in conjunction with the termination of jurisdiction at the section 364 review hearing.

DISPOSITION

The juvenile court's order terminating jurisdiction and accompanying exit orders are affirmed.

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Hull, J.